



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

May 1 9 51 AM '06

News Media Information 202 / 418-0500  
Fax-On-Demand 202 / 418-2830  
TTY 202 / 418-2555  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

DA 06-930

Released: April 26, 2006

## DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF ICG TELECOM GROUP, INC. TO LEVEL 3 COMMUNICATIONS, LLC

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 06-91

Comments Due: May 10, 2006

Reply Comments Due: May 17, 2006

On April 17, 2006, ICG Communications, Inc. ("ICG") and Level 3 Communications, LLC ("Level 3") (together, "Applicants") filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules<sup>1</sup> requesting authority to transfer control of ICG Telecom Group, Inc. ("ICG Telecom"), a holder of domestic and international Section 214 authorizations, to Level 3.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because immediately following the transaction: (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their affiliates will provide U.S. local exchange services only in geographic areas served by dominant local exchange carriers (none of which are parties to the proposed transaction); and (3) none of the Applicants or their affiliates are dominant with respect to any service.<sup>3</sup>

ICG, a Delaware corporation, through its operating subsidiary ICG Telecom, provides a variety of regulated and unregulated voice and Internet services, including Ethernet and Private

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Counsel for Applicants filed a supplement to this application on April 21, 2006 (Letter from Edward S. Quill, Jr. and Michael W. Fleming, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-91 (filed April 21, 2006) (Applicants Apr. 21, 2006 Letter)). Applicants are also filing applications for transfer of control associated with authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

<sup>3</sup> 47 C.F.R. § 63.03(b)(2)(i).

Line transport services, dedicated Internet access, PRI, and hosted Voice over Internet Protocol. ICG Telecom provides these services to businesses, government agencies and resellers, primarily in Colorado and Ohio, using its extensive fiber-optic network in those states. ICG Telecom, a Colorado corporation, is a wholly-owned subsidiary of ICG Holdings, Inc, a Colorado-based holding company which is itself wholly-owned by ICG. ICG is wholly-owned by MCCC ICG Holdings, LLC, a holding company located in Virginia.

The following entities own or control 10% or more of the equity of MCCC ICG Holdings, LLC: M/C Venture Partners V, L.P., a United States private equity venture fund (47%); Columbia Capital Equity Partners III (QP), L.P., a United States private equity venture fund (27%); and Columbia Capital Equity Partners III (Cayman), L.P., a Cayman Islands private equity venture fund (15%).

The following entities own or control 10% or more of M/C Venture Partners V, L.P.: California Public Employees Retirement System,<sup>4</sup> a United States pension fund (12%); California State Teachers Retirement System,<sup>5</sup> a United States pension fund (14%); and M/C VP V, L.L.C., a United States limited liability company that is the General Partner of M/C Venture Partners V, L.P. The following individuals, all United States citizens, own or control 10% or more and are Managers of M/C VP V, L.L.C.: James F. Wade, David D. Croll, and Peter H. O. Claudy.

Columbia Capital Equity Partners (Cayman) III, Ltd., a Cayman Islands investment company, owns or controls 10% or more and is the General Partner of Columbia Capital Equity Partners III (Cayman), L.P. The following entity owns or controls 10% or more of both Columbia Capital Equity Partners III (Cayman), Ltd. and Columbia Capital Equity Partners III (QP), L.P.: Columbia Capital Equity Partners III, L.P., and it is the sole shareholder of Columbia Capital Equity Partners (Cayman) III, Ltd. and the General Partner of Columbia Capital Equity Partners III (QP) L.P.

The following entity owns or controls 10% or more and is the General Partner of Columbia Capital Equity Partners III, L.P.: Columbia Capital III, L.L.C., a United States investment company. The following individuals, all United States citizens, own or control 10% or more and are Managing Members of Columbia Capital III, L.L.C.: James B. Fleming, Jr., R. Philip Herget, III, and Harry F. Hopper, III.

Level 3, a Delaware limited-liability company, provides domestic and international communications and information services. It is a wholly-owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), and Level 3 Financing, in turn, is a wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation which offers a wide range of communications services over its 23,000-mile broadband fiber optic network, including IP-based services,

---

<sup>4</sup> Interest holder is a retirement and health benefit pension fund with over 1.3 million members and assets of over \$150 billion.

<sup>5</sup> Interest holder is the largest public teacher pension organization, with more than 600,000 members and assets of over \$88 billion.

broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. One entity owns or controls 10% or more of Level 3 Communications, Inc.: Southeastern Asset Management, Inc. ("SAM"), a Tennessee corporation, holds sole or shared voting rights for approximately 18% of the outstanding shares of Level 3 Communications, Inc.<sup>6</sup> SAM does not hold a seat on the board of directors of Level 3 Communications, Inc.

On April 14, 2006, ICG's parent, MCCC ICG Holdings, LLC and Level 3 entered into a Stock Purchase Agreement ("Agreement") to allow Level 3 to acquire all of the stock of ICG. Following consummation of the proposed transaction, ownership of ICG will be transferred from MCCC ICG Holdings, LLC to Level 3, and ICG will be a direct, wholly-owned subsidiary of Level 3. Applicants confirm that, other than the entities identified in the application, no other entity will hold a 10% or greater interest in either of the Applicants following the proposed transaction.<sup>7</sup>

Applicants state that the proposed transaction will serve the public interest, convenience and necessity because it will provide ICG with access to Level 3's technical, managerial, and financial strengths, which will ensure the continued viability of ICG. Applicants state that the proposed changes in ownership of ICG will not inconvenience, confuse or otherwise harm ICG Telecom's customers. Applicants further assert that immediately following the proposed transaction, ICG Telecom's customers will continue to receive service under the same rates, terms and conditions of service as those which customers currently receive, and no approval is sought by Applicants to discontinue any type of service. In addition, Applicants state that both Level 3 and ICG are relatively minor participants in the local exchange and exchange access markets,<sup>8</sup> and even if all of ICG's revenue was treated as interstate, interexchange services, such additional revenue would not increase Level 3's percentage of the interstate market by even a percentage point.<sup>9</sup>

---

<sup>6</sup> SAM holds voting rights for outstanding shares that are otherwise owned by other entities for whom SAM acts as an investment advisor. None of the other owners of outstanding shares of Level 3 Communications, Inc. whose shares are voted by SAM owns a 10% or greater direct or indirect interest in Level 3 Communications, Inc.

<sup>7</sup> Applicants Apr. 21, 2006 Letter at 1.

<sup>8</sup> *Id.* at 2. See 2006 Form 10K, Item 7, of Level 3 Communications, Inc. *available at*: <http://vlt.client.shareholder.com/edgar.cfm>, reflecting core communications revenues for Level 3, much of which is not attributable to local exchange or exchange access services, of \$794 million. The addition of all ICG revenues would not add more than \$70 million to this total.

<sup>9</sup> *Id.* Applicants state that even with Level 3's recent acquisition of WiTel Communications, LLC (WiTel) and Progress Telecom, LLC (Progress), and Level 3's proposed acquisition of ICG Telecom, Level 3 will continue to hold an insignificant share of the U.S. domestic market for interstate interexchange services. In 2004, the most recent year for which the Commission has publicly disclosed revenue data, the Applicants indicate that the combined toll revenues (of which only a portion is interstate) for Level 3 and WiTel was less than \$1.7 billion – or less than 3% of the total market of more than \$70 billion. *Citing* FCC, STATISTICS OF COMMUNICATIONS COMMON CARRIERS, at 7, Tbl. 1.4 (2004/2005 ed.) (providing 2004 data), *available at*: <http://www.fcc.gov/wcb/iatd/socc.html> (reflecting revenues of \$190 million and \$1,302 million for Level 3 and WiTel, respectively in 2004. Applicants also indicate that toll revenues for Progress and ICG for that same period were too low to be individually reported. For Progress, Level 3 has disclosed that revenues from all services of

## **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before May 10, 2006 and reply comments on or before May 17, 2006.**<sup>10</sup>

Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31<sup>st</sup> day after the date of this notice.<sup>11</sup> Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

---

Progress at the time of acquisition (of which interstate interexchange revenues were only a part) were approximately \$70 million. *See* <http://www.level3.com/press/6710.html>. Applicants note that the proposed ICG acquisition is expected to increase Level 3's total revenues by a similar amount (although not all such revenues are interstate in nature). *See* <http://www.level3.com/press/7069.html>.

<sup>10</sup> *See* 47 C.F.R. § 63.03(a).

<sup>11</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

**You may submit comments, identified by the above noted docket number, by any of the following methods:**

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ccfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, [www.bcpjweb.com](http://www.bcpjweb.com); phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C212, Washington, D.C. 20554; email: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Albert M. Lewis, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C224, Washington, D.C. 20554; e-mail: [albert.lewis@fcc.gov](mailto:albert.lewis@fcc.gov);
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: [susan.o'connell@fcc.gov](mailto:susan.o'connell@fcc.gov); and
- (5) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C824, Washington, D.C. 20554; e-mail: [james.bird@fcc.gov](mailto:james.bird@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail [www.bcpweb.com](http://www.bcpweb.com).

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, please contact Tracey Wilson-Parker at (202) 418-1394, or Al Lewis at (202) 418-1561.

- FCC -